Bruhat Bengaluru
Mahanagara Palike

BRUHAT BENGALURU MAHANAGARA PALIKE

REQUEST FOR PROPOSAL

FOR

Construction of SHE Toilets under Design, Finance, Built, Operation and Transfer (DFBOT) based on duration dynamic model under commercial advertisement rights in BBMP Limits Package 1B (Reserved of ST Community)

VOLUME-II

CONCESSION AGREEMENT

CONCESSION AGREEMENT

This agreement is made and executed on this_____day of_____, 2024, at

_____

BETWEEN

BRUHAT BENGALURU MAHANAGARA PALIKE (BBMP) having its office at *N.R.Square, Bengalureu-02*, India acting through its *The Executive Engineer, ,* hereinafter referred to as the **"BBMP/AUTHORITY" (**which expression unless repugnant to context or meaning thereof shall include its successors, affiliates and assigns) of the **First Part.**

WHEREAS

A. The first party, has considered it necessary to provide facilities to public by envisages constructing SHE-toilets on Design, Finance, Built, Operate, and Transfer (DFBOT) basis keeping in view with Bengaluru aspirations to function as a Capital city of Karnataka ***(hereinafter referred to as The Project")*** on Design, Finance, Built, Operate, and Transfer (DFBOT) basis and the project facilities considered for development under this project.

B. BBMP had invited Request for Proposal (Proposals) vide tender notice no. **BBMP/EE-5 /SWM/TEND/03/2022-23/call-2** dated **06.02.2024 and** has invited bids through competitive bidding for selection of the Preferred Bidder interested in implementing the Project on the commercial format.

C. Following a process of competitive bidding, after evaluating the proposals received by the BBMP in response to its RFP dated ____/____**/2024**, the Authority accepted the Proposals submitted by **M/s** ……., the Preferred Bidder, for developing and implementing the Project and communicated its acceptance to the

Preferred Bidder vide **Letter of Acceptance**, dated **____/____/2024** (the "LOA" attached hereto as Appendix I).***(hereinafter …….. shall be referred to as "***

D. ***Concessionaire")***

E. The Concessionaire has represented through Mr._____, who has been authorized by the Concessionaire to enter into this Agreement and the Concessionaire ratifies all its actions and this agreement shall bind the Concessionaire .

Similarly it is represented by BBMP that its Executive Engineer - Solid Waste Management and that upon signing the agreement by the - Solid Waste Manangement, the instant agreement shall bind the BBMP in its entirety.

F. Following the issuance of the LOA, the Bidder/ Concessionaire in accordance with the terms and conditions as specified in the RFP the Bidder/Concessionaire shall pay quoted amount of Rs._____/-+ GST to BBMP in the form of Demand Draft or to be paid through online gateaway in favour of Commissioner, BBMP.

G. In light of the compliance by the Concessionaire of the pre-conditions to the execution of the concession Agreement, Authority has agreed to enter into this Agreement vesting the rights for the implementation of the Project with the Concessionaire on the terms, conditions and covenants hereinafter set forth in this Agreement.

H. The Concessionaire undertakes to duly discharge its obligations under this Agreement and implement the Project and agrees to undertake and comply with the terms and conditions hereof as binding terms.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: ARTICLE 1- DEFINITIONS AND INTERPRETATION

Definitions

"**Advertisement space**" means the area earmarked by Authority for putting up Advertisement panels by the Concessionaire Advertisements should not be published on seperate structure / Cantilever structure . The advertisement space for type 1:7.5 sqm and Type 2: 12.5sqm

"Agreement" shall mean the Concession agreement entered among BBMP and the Concessionaire.

"BBMP/Authority " shall mean the BRUHAT BENGALURU MAHANAGARA PALIKE **Authority.**

"**Concessionaire "** means M/s_____ and shall include its successors and permitted assigns;

"Bid or Detailed Bid" shall mean each or Bid (one **Proposal** per project) submitted by the Bidder for project, in response to this RFP including clarifications and/or amendments to RFP, if any.

"Bid/Performance Security" shall mean the security furnished by the Bidder in the form of bank guarantee as stipulated in the RFP document.

"Bidder" shall mean who has responded to the RFP and submitted his Bid in response to the RFP.

"Construction Commencement Date" shall be 10 days from the approval of the designs by the authorities and issuance of NOC from all other concerned department for commencing the construction work and from which the site is handed over to Concessionaire (encumbrance free) mentioned in this Agreement

"Commercial Operation Date (COD)" shall mean the Concessionaire shall complete the Construction Works within a period of Twelve (12) Months from the Construction

commencement Date, which may be extended under the provisions of this Agreement or by mutual agreement of the Parties, date of commercial operation shall start after completion of construction in all respects.

"Firm" shall mean a single legal entity, which is registered body.

"Letter of Award" shall mean the letter or to be **LOA** issued by BBMP to the Bidder conveying intention of award of the project, in accordance with the terms of this RFP

"Operation Period" means the period from the Commercial Operation Date till the issuance of Vesting Certificate by the Authority.

"Government Agency" means State government or Governmental Department, Agency, Authority, instrumentality, central, state, or local, having jurisdiction over the concessionaire, the Facility Project Location, Facility Assets or any portion thereof, or the performance of all or any of the services or obligations of the concessionaire under or pursuant to this Agreement.

"**Maintenance"** means upkeep of the facility as per best industry standards and practices without hindrance and includes repairs, replacements, renovation or modernization to keep the facility in working and usable condition.

"Material Adverse Effect" means material adverse effect on (a) the ability of the any of the Party to this Agreement to observe and perform any of its rights and obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

"Material Breach" means a breach by either Party of any of its obligations under this Agreement which has/likely to have a Material Adverse Effect on the Facility and which such

Party shall have failed to cure within the Cure Period.

"Parties" means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually.

"Person" means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or government agency or any other legal entity.

"Project" or Construction, operation and maintenance of SHE-Toilets Design, Finance,Built, Operate and Transfer (DFBOT) basis means, subject to the provisions of the Concession Agreement,

(i) designing, construction, implementation, completion, commissioning, marketing, management, operation and maintenance and commercial use of the Project Facilities at each of the Project Locations, execution of the Works and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Concessionaire during the Concession Period;

(ii) the demanding, charging, collecting, retaining and appropriating and revision of advertisement tariffs by the Concessionaire and (iii) the transfer of the Project/Project Facilities by the Concessionaire to BBMP or its nominated agency at the end of the Concession Period by efflux of time or prior termination. For avoidance of doubt it is clarified that Project as enumerated above shall be construed as a Project for the Project facility at the Project Location.

"Project Completion" shall mean the Project shall be deemed to be complete and open for Commercial Operations only when the Completion Certificate is issued by the Authority (the "Project Completion"). The Completion Certificate shall specify the date on which, in the opinion of the Authority the Project was completed and ready for Commercial Operations (the "Commercial Operations Date").

"RFP" means the Request for Proposal Document.

"Relevant Authorities" means unless mentioned in this Agreement, means generally any governmental, quasi-governmental, regulatory or administrative authority, agency, department or entity.

Preliminary Notice/notice for Cure Period: In the concessionaire breaches any of the terms and conditions of this present agreement or fails to comply with any of the provisions mentioned in this present agreement, then authority shall issue Preliminary notice of 60 days to cure/rectify the defaults committed by the concessionaire before issuing the termination notice.

"Termination Date" means the date on which the termination occurs on 90th day from the delivery of termination notice of 90 days after the h the notice for cure period of 60 days being issued. **"Termination Notice"** means a communication by Registered Post in writing by a Party to the other Party regarding termination in accordance with the applicable provisions of this Agreement. On issuing termination notice if the concessionaire rectify the breach mentioned in preliminary notice before the termination date, then the concessionaire shall have right to continue the Tender project with mutual consent of Authority and concessionaire.

Ground rent: the Ground rent is fixed at Rs 55000/- Per toilet Per Annum For this package.

The Annual Concession Fee payable to BBMP will include 5% escalation per annum on cumulative basis after 4th year for the next consequent years from the Commencement Date of the Agreement until the end of the Concession Period.

The annual concession fee in monthly installments shall be paid up the start of the current financial years within the first week of every month.

Interpretations

In this Agreement, unless the context otherwise requires:

(a) Appendices to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement.

(b) references to "construction" include, unless the context otherwise requires, design, development of Project Location, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" shall be construed accordingly;

(c) wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate, agreement, Authorization, proposal, communication, information or report or determination by any Party and/or the Independent Engineer/Consultant/Consultant/ Expert, unless otherwise specified, such notice, endorsement, consent, approval, certificate, agreement, authorization, proposal, communication, information or report or determination shall be in writing under the hand of the duly authorized representative of such Party and/or the Independent Engineer/Consultant/Expert in this behalf;

ARTICLE 2 – AUTHORISATION

1. Grant of Authorization

(a) Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants to the Concessionaire , and the Concessionaire hereby accepts the exclusive right, authority and Authorization during the Concession Period to undertake, the development, design, engineering, financing, procurement, construction, completion, commissioning, implementation, marketing, management, administration and maintenance of the Project at the Project Locations on the commercial format, and exercise and/or enjoy the rights, powers, privileges, authorizations and entitlements as set forth in this Agreement (collectively the **"Authorization")**.

(b) The Authorization granted herein includes, subject to the provisions hereof, the exclusive right of the Concessionaire to:

i. hold, occupy, enter upon and use the Project Location(s) for implementing the Project, establishing the facilities and executing the Works and to make at its cost and expense such development, construction and improvements therein or thereon as may be necessary or appropriate to implement the Project subject to and in accordance with the provisions of this Agreement;

ii. Concessionaire have rights to Let out spaces at the Project Location and/or Project facilities for advertisement's through licensing, franchising, management service, sub- contracting or other suitable arrangements on mutually agreed market driven conditions ("Contractual Arrangements");

iii. Carry out such other activities incidental to the foregoing or proper or desirable

for the safe, efficient and economic implementation and operations of the Project.

(c) The Concessionaire shall, on the Date of issuance of Vesting Certificate by the Authority , transfer and hand over the Project and the Project Assets to the Authority or its nominated agency in accordance with the provisions hereof.

(d) The Concessionaire shall not part with or create any Encumbrances on the whole or any part of the Project Location save and except as expressly permitted under this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors, to enter into Contractual Arrangements and to assign its rights here under and create a security interest in favour of the Lenders in accordance with the provisions of this Agreement.

2 - Concession Period

1.1.1 The Concession Period of ____ years excluding of construction period of 12 months, starting from Project Completion Date, further to the earlier termination or any extension of this Agreement in accordance with the terms and conditions hereof, during which the Concessionaire is authorized to implement the Project and make commercial use thereof in accordance with the provision of this Agreement. For the avoidance of doubt, the concession Period shall not include the period of construction.

ARTICLE 3 - CONDITIONS PRECEDENT

Save and except as may otherwise be expressly provided herein, the obligations of a Party under this Agreement shall be subject to the satisfaction in full of the Conditions precedent relating to the other Party (the **"Conditions Precedent"**).

1 - Conditions Precedent for Authority

The Authority shall have:

(a) Provided to the Concessionaire, permission/license to undertake the Project in the Project Location/s through an 'Order' in accordance with the terms of this Agreement;

(b) granted advertisement rights to the Concessionaire for generating revenue for the agreed Authorization period; and

(c) made necessary arrangements (in co-ordination with the line departments) for procuring necessary approvals from all the authorities, governments, semi government, agencies, etc. to enable the Concessionaire to commence the Implementation of the Project.

(d) In the event this Agreement is terminated due to non-fulfillment of the Authority's Conditions Precedent, the Authority shall upon such termination return/refund in full the Performance Security to the Concessionaire, unless the Authority's failure to fulfill its Conditions Precedent is not a result of the Concessionaire default, in which case the Authority shall forfeit the Construction Performance Security as damages.

2 - Conditions Precedent for Concessionaire

The Concessionaire shall have:

(e) made all the applications at concessionaire cost and procured the Technical Alliances, Applicable Permits required for commencing construction and execution of the Works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Applicable Permits are in full force and effect and the Concessionaire is in compliance with the conditions of grant thereof and they are valid and effective;

(f) Concessionaire shall do the detail survey of the location under purview of RFP and submit the detail project report with design and drawings to the authority and authority should approve the same within 10 days of the submission of the agreement.

(g) confirmed in writing that all the representations and warranties of the Preferred Bidder/Concessionaire set forth in the Proposal and forming part of this Agreement are true and correct as on the date of execution of this Agreement

4 - Non-fulfillment of Conditions Precedent

(h) In the event the Conditions Precedent for a Party have not been fulfilled within the stipulated time and the Authority has not waived, fully or partially, such conditions relating to the Concessionaire , this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and BBMP shall pay the cost of expenses incurred for project carried by concessionaire till date of termination.

(i) In the event that possession of the Project Location has been delivered to the Concessionaire prior to the fulfillment in full of the Conditions Precedent, upon the termination of this Agreement under this clause 4, the Project Location shall immediately revert to the Authority , free and clear from any encumbrances and along with all Easement Rights, irrespective of any outstanding mutual claims between the Parties.

(j) In the event this Agreement is terminated due to non-fulfillment of the Concessionaire 's Conditions Precedent and the same is not due to Authority shall issue a preliminary notice.

(k) In the event this Agreement is terminated due to non- fulfillment of the Authority 's Conditions Precedent, the Authority shall upon such termination return/refund in full the Security Deposit or any other refundable deposit's to the Concessionaire.

(l) Instead of this Agreement terminating as provided in this clause.4, the Parties shall take all efforts to and shall by mutual agreement extend the time for three more months or more for fulfilling the Conditions Precedent and Termination of the Agreement shall be the last resort. In such case, the Authority shall compensate the Concessionaire by extending the Authorization period accordingly.

ARTICLE 4 - PROJECT LOCATION(S)

1 – Possession of Project Location

i. The signing of this agreement and fulfillment of conditions precedent by both the parties is deemed to provide the concessionaire with access to the Project Location(s). The Project Locations for the proposed Projects are at the key locations as enumerated in annexure in Appendix II.

ii. The Authority shall bear all the costs of making available the Project Location(s) free from all encumbrance, encroachments etc to the Concessionaire and be liable to remove encroachments if any at its cost, including the payment of compensation, if any, to such Persons or litigation pursuant thereto and the Concessionaire shall not be liable in this behalf. It shall be the absolute duty of the Authority to make available the Project Location / Site absolutely free from all possible problems / encumbrances of any type / encroachment, and shall ensure that there is absolutely no problem or hindrance to the Concessionaire to enter upon and use the said location / Site for its use.

iii. In consideration of implementation of the Project by the Concessionaire and the payment herein reserved and of other covenants on the part of the Concessionaire , the Authority shall, upon signing of this agreement, be deemed to have handed and delivered to the Concessionaire on an "as is where is basis" the possession of all the location, free from Encumbrances, and together with the Easement Rights and with the full and free right and liberty of way and passage and other rights in relation thereto and the right, authority and license to implement the Project there at in accordance with the provisions of this Agreement, for a period that shall be co-terminus with the Authorization Period.

2 - Use of Project Location

iv. The Concessionaire shall not without prior written consent or approval of the Authority, use the Project Location for any purpose other than for the purposes of implementing the Project and commercial use of the Project Location in accordance with the provisions of this Agreement and purposes incidental thereto or as may otherwise be

approved in writing by the Authority. The Concessionaire acknowledges, accepts, confirms and agrees that this is an essential condition of this Agreement.

v. The Concessionaire shall maintain vigil over the Project Location during the Authorization Period to prevent encroachments or occupation of the Project Location and in case of any encroachment or occupation forthwith remove the same at its cost and expense and inform the Authority thereof.

3 - Information about Project Location

The information about the Project Location(s) is provided by the Authority to the Concessionaire in good faith and with due regard to the matters for which such information is required by the Concessionaire . In case if any encumbrance or encroachment is found or detected and is causing problems to the Concessionaire in continuing with the Project and the same is detected in the future, it shall be the sole duty of the Authority to remove the same to the Concessionaire 's satisfaction and the period consumed in the same shall be compensated by extending the operation period adequately.

ARTICLE 5 - OBLIGATION OF PARTIES

1 - Obligations of the Concessionaire

In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set out elsewhere in this Agreement, the Concessionaire shall, without qualification, at its own cost and expense observe, undertake, perform and comply during the Authorization Period with the following obligations:

(a) The Concessionaire shall design, plan, develop, finance, construct, market, administer, manage and operate and maintain the Project/Project Facilities, including without limitation the necessary infrastructure, services and facilities, during the Authorization Period strictly in accordance with the provisions of this Agreement, Development, Controls, Specifications and Standards enumerated in

RFP, Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Concessionaire shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement.

(b) In case of any delay in shifting of the project due to which the project could not be completed and provided that such delay is not due to any default or negligence on the part of the Concessionaire or Persons claiming through or under it, Authority shall commensurate the loss of time period by extending the Authorization Period proportionately or by adjusting the same in the Authorization Concession fees to be made by the concessionaire .

(c) In implementing the Project, the Concessionaire shall ensure compliance by itself and Persons claiming through or under it with all Applicable Laws, including construction laws, traffic safety regulation, guidelines and the terms of Applicable Permits and the Concessionaire shall be entirely liable for any violations or breaches thereof and indemnify and keep indemnified the Authority from and against all liabilities and costs in this behalf.

(d) The Concessionaire shall obtain and maintain at its cost all Applicable Permits, (including all environmental permits), from the State /Central Government or their Agencies, as may be required for implementation of this Project and running the facility. The Concessionaire shall maintain such Applicable Permits in full force and effect so long as it is necessary in order for the Concessionaire to perform its obligations hereunder.

(e) The Concessionaire shall be solely and exclusively responsible for the recruitment, transportation, accommodation, catering, payment of the salaries, wages and other payments and costs incidental thereto, health, hygiene, safety etc. payable under Applicable Laws arising from the respective terms and conditions of employment of all labor and personnel employed by the Concessionaire , its Contractors, agents and representatives on or in connection with the Works or the Project Location under or through whatever legal relationship;

(f) The Concessionaire shall make efforts to maintain harmony and good industrial relations among the labor and personnel employed in connection with the performance of the Concessionaire 's obligations under this Agreement, whether by

himself or through the sub-contractors, and be the principal employer in respect of such labor and personnel. The Concessionaire shall be solely responsible and liable for compliance with all Applicable Laws, including labor and local laws, pertaining to the employment of labor, staff and personnel by it and its Contractors for implementing the Project and the Authority shall not be liable in any manner whatsoever in respect of such employees and their employment.

(g) The Concessionaire may sub-contract at its cost and risk to Contractors possessing the required skill, expertise, capacity and technical and financial qualifications, the designing, engineering, procurement, fabrication and construction of civil / mechanical / electrical engineering structures / equipment, and / or operation and maintenance of the Project or any part thereof provided the Concessionaire shall at all times be solely responsible and liable for any defect, deficiency or delay in the construction and erection of the structures/equipment or any part thereof and for the operation and maintenance of the Project in accordance with the provisions of this Agreement and provided further that this does not result in the carrying out of the whole or substantially the whole, as determined by the Authority, of the Works by the Contractors. The Concessionaire shall ensure that any of its obligations, which are relevant to the scope of work of a Contractor pursuant to this Agreement are incorporated in the terms and conditions under which such Contractor is retained.

(h) For the avoidance of doubt, it is hereby clarified that notwithstanding the appointment of a Subcontractor by the Concessionaire for any of the aforesaid purposes, the Concessionaire shall remain responsible for obligations performed or to be performed by the Subcontractors to the same extent as if such obligations were to be always performed by the Concessionaire and shall at all times be solely responsible for any defect, deficiency or delay by the Subcontractor in the implementation of the Project/execution of Works.

(i) The Concessionaire further undertakes and covenants that it shall be solely responsible for all payments to be made to the Subcontractors and shall indemnify the Authority and keep it indemnified and harmless from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses that the BBMP may incur, insofar as such losses directly arise out of, in

any way relate to, or result from the non-performance by the Concessionaire of its obligations to the Subcontractors including non-payment of any monies to such Subcontractors.

(j) Not make any replacement, modification or amendment to any of the Transaction Documents at any time without the prior written consent of the Authority if such replacement, modification or amendment has or may have the effect of imposing or increasing any financial liability or obligation on the Authority and in the event any replacement, modification or amendment is made without such consent, the Concessionaire shall not enforce such replacement, modification or amendment nor permit enforcement thereof against the Authority .

(k) The Concessionaire shall take all reasonable precautions for the prevention of accidents on or about the Project Location and provide all reasonable assistance and emergency medical aid to accident victims. For this purpose Concessionaire shall maintain liaison with emergency service providers and seek necessary police assistance on payment of applicable charges for the provision of such services as are not provided in the normal course or are available only on payment.

(l) The Concessionaire shall undertake marketing of advertisements rights at its cost and expense and liaison with sector players, and interested parties etc.

(m) The Concessionaire shall maintain required insurance in accordance with the provisions hereof.

(n) The Concessionaire shall be responsible for safety, soundness and durability of the Project including all structures forming part thereof and their compliance with the Specifications and Standards.

(o) The Concessionaire shall subject to the provisions hereof, achieve Project Completion within (12) Twelve months from the Construction Commencement date.

(p) The Concessionaire shall hand over the Project /Project Assets free from encumbrances and encroachments to the Authority or its nominated agency upon the expiry/termination of the Authorization Period/this Agreement.

(q) The Concessionaire shall promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer/Consultant and ensure completion of the construction of the Project in all

respects in accordance with the provisions of this Agreement;

(r) The Concessionaire shall commence Commercial Operations of the Project Facilities only upon issuance of the Completion Certificate.

(s) The Concessionaire shall Operate, maintain, manage, repair the Project/Project Facilities at its cost and risk during the Operations Period, strictly in accordance with the provisions of this Agreement, Development Controls and Technical Specifications as enumerated in RFP, the Applicable Laws, the terms of Applicable Permits and Good Industry Practice.

(t) The Concessionaire shall make timely payments of applicable statutory taxes, levies, cess, rents, fines to respective Government Agencies during the Authorization Period, payable by the Concessionaire to the BBMP or any other Government Agency.

3 - Obligations of Authority

In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set out elsewhere in this Agreement, the Authority agrees and undertake as under:

(a) The Authority shall, at the request of the Concessionaire , grant Applicable Permits with reasonable promptness that are in its authority and capacity to grant and, as the case may be, assist and issue recommendatory letters and make best efforts to assist the Concessionaire in obtaining all the Applicable Permits from Government Authorities, Authorizations to import equipment and materials required for the Project ; provided that nothing contained in this provision shall relieve the Concessionaire of its obligations under this Agreement to obtain the Applicable Permits and of being in compliance with the requirements of the same, provided further that the Concessionaire (i) provides to the Authority all necessary relevant details and other information as may reasonably be required by the Authority and (ii) keeps the Applicable Permits in force and effect throughout the Authorization Period.

(b) In the event of any action or suit to prevent, prohibit or otherwise challenge the Project by any Government Authority, trade union, environmental group or any other

Person or organization, which might reasonably be expected to materially and adversely affect the Project Assets, the implementation of the Project or the enjoyment by the Concessionaire of its rights and benefits under the Authorization granted herein, the Authority shall, if requested by the Concessionaire in writing, on a best effort basis, take such reasonable action as is available to it to challenge and to mitigate such effects.

(c) In such an aforesaid event and due to any reason the Project is stalled or cancelled for no fault of the Concessionaire and / or as result of any court orders or otherwise also the project is stalled, cancelled , terminated, then the Authority shall be under full obligation to compensate the Concessionaire for the damages present, past and future sustained and the same shall be done within a reasonable period of not more than 30 days;

(d) BBMP will assist for metered Electric connection. BBMP will not bear the cost of electric cable and road restoration charges. However, the concessionaire will bear the charges of electric meter and monthly electric bill as per applicable rates.

ARTICLE 6 - PROJECT IMPLEMENTATION

1 – Architectural, Structural Designs and Advertisement Space

(a) The Authority shall approve the Architectural and Structural Design prepared by the Concessionaire .

(b) Within 30 days from the date of agreement signing, the Concessionaire shall at its cost prepare as per the RFP terms and submit to the Authority, the architectural design/drawings for the Project for approval by BBMP for concepts submitted.

(c) The detailed architectural and structural design for the Project shall, inter alia, set out the full details of the developmental activities proposed to be carried out by the Concessionaire for implementation of the Project.

(d) The Authority shall review the Architectural Designs submitted by the Concessionaire for conformity with the Specifications and Standards and in the event the Authority has any objection, it shall promptly within 3 working days" from the

submission date by the Concessionaire , notify the Concessionaire of its objections, seek clarifications or suggest changes or modifications or corrections thereto.

If the Authority does not object to the detailed architectural design submitted to it by the Concessionaire within "03 working days" of submission, the Authority shall be deemed to have approved such architectural design **("Approved Designs").**

(e) Any design, drawing or specification provided by the Authority to the Concessionaire shall only be indicative and the Concessionaire shall accept the same at its sole risk, cost and consequence. The Authority shall not be responsible or liable in any manner for the accuracy, completeness or otherwise of the architectural and structural design or the construction and implementation of the Project/Works by the Concessionaire on the basis thereof, irrespective of any perusal or review thereof or comment thereon by the Authority.

2 - Development of Project Location and Implementation of Works

The Concessionaire shall commence the Works for the development and implementation of the Project after 10 days from the date of which the site is handed over to Concessionaire (encumbrance free) ("Construction Commencement Date") The Authority shall, by itself at its cost and risk undertake the land filling, leveling and demarcation and division of the Project Location etc. for establishment of the Project Facilities, in accordance with the provisions of this Agreement, Development Controls and Technical Specifications and Good Industry Practice.

3 - Project Completion

i. The Concessionaire shall complete the Construction Works within a period of Twelve (12) Months from the Construction Commencement Date, which may be extended under the provisions of this Agreement or by mutual agreement of the Parties.

ii. The Project shall be deemed to be complete and open for Commercial Operations only when the Completion Certificate is issued by the Authority (the "Project Completion"). The Completion Certificate shall specify the date on which, in the opinion of the Authority the Project was completed and ready for

Commercial Operations (the "Commercial Operations Date").

iii. Subject to compliance with the provisions of this Agreement and the Applicable Laws, the Concessionaire shall be entitled to undertake the marketing of advertisement rights and use of the Project Facilities. For the avoidance of doubt, the Concessionaire shall have no right and authority to sub-let the Project Location to any person, in full or part in any manner, form, arrangement, and device whatsoever.

4 - Marketing of Advertisement Rights

(f) The Concessionaire shall only hoist advertisement in the manner specified in the Advertisement Area mentioned in the "Approved Designs" as approved by the BBMP. The total area of advertisement shall not be more than the space approved by BBMP and for which license / permit has been issued by BBMP.

(g) The Concessionaire shall be solely responsible for the marketing of the advertisement rights at the Project Facilities. The Concessionaire shall be entitled to commence such marketing at its cost and risk from the execution of the agreement and to accept advances, booking amounts and other considerations from such users from such date; provided that Authority shall not be liable in any manner whatsoever to any Person in this behalf.

(h) The Concessionaire shall ensure that the advertising and marketing of the advertisement rights at the project facilities is carried out in a manner that is consistent with and not in derogation of or conflict with any terms or provisions of this Agreement and the Applicable Laws. The Concessionaire shall abide by the Provisions of the Development Controls, Specifications and Standards as set forth in RFP. The Concessionaire shall comply with the guidelines of Advertising Standards Council of India (ASCI) and other guidelines/ legislations/ Government Orders/Municipal Acts/Bye-Laws etc. relating to advertisement/ commercial publicity/ display of items etc.

Article 5 –MAINTENANCE AND PERFORMANCE STANDARDS

1. GENERAL

During the period of operation, the Developer shall maintain all the facilities in accordance with performance standards and maintenance requirements, as mentioned below:

a. Perform maintenance on a routine and periodic basis.

b. Identify potential problems early within the context of the planned maintenance system so that corrective action may be planned and completed in a timely manner.

2 MAINTENANCE WORKS

i. The Concessionaire shall in consultation with BBMP evolve an Operation.

ii. Maintenance of all the electrical-mechanical equipments, machineries shall be as per "Original Equipment Manufacturers" (OEM).

a. Concessionaire shall undertake planned and reactive maintenance of equipment to ensure that equipment is safe, accurate and working to optimum performance and to achieve maximum availability and continuity of services by maintaining standards set by equipment manufacturer.

ARTICLE 6 - PAYMENTS TO AUTHORITY

1. Concession Fee:

(a) In consideration for the grant of the Authorization, the Preferred Bidder/Concessionaire shall have made the following payments before the execution of this Agreement in the manner mentioned hereunder:

(i) Concession fee: In consideration of the Authorization granted for implementation of Project and rights appurtenant thereto in favour of the Concessionaire , the Concessionaire shall pay annual concession fee.

(ii) Escalation: The ground rent is incremented by 5% after 4th year for the next consequent years from the Commencement Date of the Agreement until the end of the Concession Period.

ARTICLE 7 -PERFORMANCE SECURITY - BANK GUARANTEE

The successful bidder shall at his own expense provide the BBMP, within Forty Five (45) working days of the date of notice of award of the contract or prior to signing of the contract whichever is earlier, an unconditional and irrevocable Performance Bank Guarantee (PBG) from a Nationalized bank in favour of Commissioner, BBMP, payable on demand, for the due performance and fulfillment of the Contract by the bidder.

This Performance Bank Guarantee will be for an amount of Rs. _____ till the implementation period.

ARTICLE 8 – INSURANCE

1 - Insurance Cover

The Concessionaire shall maintain or cause to be maintained, at its own expense, insurance on commercially reasonable terms and reasonably required to be maintained, consistent with similar facilities of the size and type of the Project and as may be required by the Lenders including but not limited to the insurance policies covering the following (the "Insurance Cover"):

(i) Construction/concessionaire s'/contractors' all risk insurance;
(ii) Erection all risk policy
(iii) comprehensive third party liability insurance including injury or death to personnel of the Authority and others who may enter the Project Location;
(iv) workmen's compensation insurance;
(v) loss, damage or destruction of the Project Facilities/Project at replacement value or full market value (including fire, burglary, standard and special peril)
(vi) the Concessionaire 's general liability arising out of the Authorization;
(vii) liability to third parties

Apart from the above Concessionaire shall take any other insurance that may be necessary to protect the Concessionaire and its employees and its assets, including all Force Majeure Events that are insurable and not otherwise covered in items above.

ARTICLE 09- LIABILITY AND INDEMNIFICATION

1 - Liability of Concessionaire

Notwithstanding anything to the contrary contained in this Agreement,

(a) in addition to the Concessionaire 's liability and obligations and the Authority 's remedies provided elsewhere in this Agreement, the Concessionaire shall be solely responsible for any loss of or damage to the Project/Project Facilities and the Project Assets, damage to environment, death or injury to person provided that the same is caused due to the use of the facilities provided by the Concessionaire , and any other liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by the Authority ,

(i) during the Authorization Period resulting from any negligent act or omission of the Concessionaire , the Contractors, the Contractual Counter Parties or any other Person and their respective employees, agents, contractors and representatives.

(ii) in connection with, arising out of, or resulting from any breach of warranty, material misrepresentation by the Concessionaire , Contractor or Contractual Counter Parties, or non-performance of any term, condition, covenant or obligation to be performed by the Concessionaire , Contractor or Contractual Counter Parties under this Agreement and the Transaction Documents.

(b) The Concessionaire shall also be liable for any loss or damage which occurs as a result of any d i r e c t act, event, omission, negligence or default (including property circumstances, quality of materials used, workmanship, structural, design or other defects, latent or patent, non-compliance with development control regulations, building bye laws as may be applicable, other Applicable Laws, regulatory requirements of Government Authorities, Specifications and Standards or any other matter) for which the Concessionaire is liable or which is directly attributable to the Concessionaire and, in turn, the Persons claiming through or under the Concessionaire .

2 – Indemnification

(a) Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Concessionaire agrees to indemnify and hold harmless the Authority and its officers, employees, agents, trustees and consultants (each a "Authority Indemnified Party") promptly upon demand at any time and from time to time, from and against any and all losses, claims, demands, damages, liabilities, costs, penalties, litigation, proceedings (including reasonable attorneys' fees and disbursements) and expenses of any nature whatsoever (collectively, "Losses") to which the Authority Indemnified Party may become subject, insofar as such Losses arise out of, in any way relate to, or result from (i) any mis-statement or any breach of any representation or warranty made by Concessionaire or (ii) the failure by Concessionaire to fulfill any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Concessionaire Person claiming through or under the Concessionaire or (iii) any claim or proceeding by any Third Party against the Authority arising out of any act, deed or thing done or omitted to be done by Concessionaire or (iv) as a result of failure on the part of the Concessionaire to perform any of its obligations under this Agreement or on the Concessionaire committing breach of any of the terms and conditions of this Agreement or (v) on the failure of the Concessionaire to perform any of its statutory duties and/or obligations or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by any user of the Project Facilities or the Concessionaire 's Contactors or employees or any Third Party or Government Authority or

(vi) as a result of any failure or negligence or default of the Concessionaire or its Contractor(s), subcontractor(s), or employees, servants, agents of such Contractor(s) and/or subcontractor(s) and/or invitees as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in

connection with the Concessionaire 's use and occupation of Project Location and/or construction, operation and maintenance of the Project. For the avoidance of doubt, indemnification of Losses pursuant to this clause 09 shall be made in an amount or amounts sufficient to restore each Authority Indemnified Party to the financial position it would have been in had the Losses not occurred.

ARTICLE 10 - FORCE MAJEURE

In the event of force Majeure act including but not limited to weather conditions, lightning, earthquake, cyclone, volcanic eruption or fire, floods, cyclone storms, thunder storm, terror attack, heavy rains, landslide or any such occurrence beyond the control of the effected parties, which is likely to affect the project and other outdoor advertising display materials, respectively which prevent the party claiming force majeure Event (the affected party) from performing its obligation under this agreement and which act or event i) is beyond the reasonable control and not arising out of the fault of the affected party, ii) the affected party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, and iii) has a material adverse effect on the project. On occurrence of any force majeure event, there shall be no termination of this agreement;

ARTICLE 11 - TERMINATION AND EXPIRY OF AGREEMENT

1 - Termination Procedure:

In the event of any of the breach of the clauses mentioned in this agreement authority shall issue preliminary notice of 60 days to rectify the breach and non rectification of breach of any covenants, the authority has all right to issue Termination Notice, which shall be of not less than 90 (Ninety) days and not ordinarily be more than 95 (ninety Five) days, ("Termination Period") and at the expiry of the Termination Period, this Agreement shall stand terminated.

2. Termination Period

During Termination Period, the Parties shall continue to perform such of their respective

obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

ARTICLE 12. Transfer of Assets

(i) On the Transfer Date, the Concessionaire shall subject to the provisions of this Agreement:

A. Transfer, assign and deliver to the Authority, free and clear of any Encumbrances, the vacant and peaceful possession of the Project, Project Assets and the Project Location along with the buildings, facilities and structures constructed on, over, at or under it and its right, title and interest in and to the Project the Project Assets.

B. transfer all its rights, titles and interest in or over the tangible assets comprised in the Project (including movable assets which the Authority agrees to take over) to the Authority or its nominated agency and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.

C. hand over to the Authority all documents including as built drawings, designs, documents, information and records relating to the Project and the Project Assets.

D. to the extent possible assign to the Authority at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies.

E. The transfer of immovable property comprising the Project and the Project Assets shall be deemed to be a termination of all leasehold arrangements or licenses in relation to the Project Location and title to all such immovable property shall automatically revert to the Authority or its nominated agency. The movable property comprising the Project and the Project Assets shall be deemed to be transferred by delivery and possession.

F. All contracts, agreements, arrangement's etc entered into by the Concessionaire with its suppliers, service providers, O&M contract's, shall also be liable to be terminated forthwith along with the termination of this agreement at the sole option and discretion of the Authority .

ARTICLE 13 - DISPUTE RESOLUTION

1 – Arbitration

In the case of any dispute arising upon or in relation to or in connection with the project thereof shall be amicably resolved through discussions between the parties, failing which the dispute may be settled under the rule of Indian Arbitration Act, 1996 by three arbitrators appointed, one each by the Authority and the Concessionaire and the third by mutual agreement of these two arbitrators under such rules. The said arbitrators shall have full power to open up review and revise any decision, opinion, instruction determination certificate or evaluation of the Authority and the Concessionaire related to the dispute. In the event of failure of these discussions and judicial resolution becoming necessary, then and only in that event, the matter shall be referred to the courts of State of Karnataka, India. The Arbitration shall be held in Bangalore and the language shall be English.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

1 - Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the courts at Karnataka, shall have jurisdiction over all matters arising out of or relating to this Agreement.

2 - Waiver & Remedies

(a) The waiver by either Party, including conditional or partial waiver, of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:

(i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;

(ii) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and

(iii) shall not affect the validity or enforceability of this Agreement in any manner.

(b) No failure on the part of any Party to exercise, and no delay in exercising, any right, power, obligation or privilege hereunder or time or indulgence granted by a Party to the other Party shall operate or be treated or deemed as a waiver thereof or a consent thereto or the acceptance of any variation or relinquishment of any such right hereunder; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by the Applicable Laws.

(c) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

3 – Survival

The Termination/expiry of this Agreement shall not relieve either Party of any

obligations hereunder which expressly or by implication survive Termination/expiry hereof.

4 - Entire Agreements and Amendments

(a) This Agreement constitutes the complete, exclusive and entire statement of the terms of the agreement between the Parties on the subject hereof and supersede all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof.

(b) No amendment or modification or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be valid and effective unless the same is in writing and signed by the Parties or their duly authorized representative especially empowered in this behalf and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

5 - Notices

Unless otherwise stated, notices to be given under this Agreement shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Authority :

Fax No./Tel no. ----------

Attn:

If to Concessionaire :

Fax No./Tel no. ----------

Attn:

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Party in writing prior to the adoption thereof.

6 – Severability

(a) If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.

(b) The Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted, as nearly as is practicable, to such invalid, illegal and unenforceable provision. Provided failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure under this Agreement or otherwise.

7 - No Partnership

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in

accordance with the Provisions of this Agreement. Neither Party shall have any authority to bind the other in any manner whatsoever.

8 - Language

The language of this Agreement is English. All notices, correspondence, Project Contracts, documentation, Designs and Drawings, DPR, design data, test reports, certificates, specifications and standards and information in respect of this Agreement, under or in connection with this Agreement shall be in the English language. All other written and printed matter, communications, documentation, proceedings and notices etc. pursuant or relevant to this Agreement shall be in the English language.

9 - Counterparts

This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document.

10 – Confidentiality

Concessionaire shall, without the prior written consent of the Authority , at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose to any Person or use for any purpose unconnected with the Project any information which is by its nature or is marked as Proprietary Material or "confidential", concerning the other (including any information concerning the contents of this Agreement) except to its representatives and professional advisors or as may be required by any law, rule, regulation or any judicial process.

11 Assignability

(a) Except as otherwise provided in this Agreement, the Concessionaire shall not assign its rights, title or interest in this Agreement in favour of any Persons without prior written consent of the Authority .

N WITNESS WHEREOF the Parties have executed and delivered this Agreement by their duly authorized representative on the date first above written**:**

Signed on behalf of the Bruhat Bangalore Mahanagara Palike (BBMP	SIGNED, SEALED AND DELIVERED
_____(Signature) _____(Name) _____(Designation)	Concessionaire by the hand of its Authorized representative Mr.___. _____(Signature) _____(Name) _____(Designation) pursuant to Resolution dated..... of its Board of Directors. Preferred Bidder by the Hand of its Authorized representative Mr._____. _____(Signature) _____(Name)

In the presence of

Witnesses:

(i)

(ii)